

Arizona Department of
Economic Security



Appeals Board

Appeals Board No. T-1031509-001-B

In the Matter of:

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XXXXX XXXXXXX, XX XXXXX-XXXX

E S A TAX UNIT CFP/CLA
% ROBERT DUNN III
ASSISTANT ATTORNEY GENERAL
1275 W WASHINGTON ST, SC 040A
PHOENIX, AZ 85007-2976

Employer

Department

DECISION
AFFIRMED

THE **EMPLOYER** petitioned for hearing from the Reconsidered Determination issued on July 6, 2005, which affirmed the Determination of Liability for Employment or Wages issued by the Department on June 27, 2002. The Reconsidered Determination held that:

The Determination included the individuals and amounts on an attached Notice of Assessment Report for the quarters ending June 30, 1999 through December 31, 2001.

* * *

In light of the foregoing, we must conclude that [the Employer] controlled, or had the right to control, the services of XXX XXXXXXXXXXXX/XXXXXXXXXXXX XXXXXXXX to a sufficient degree to satisfy the definition of employee under A.R.S. § 23-613.01.

The appeal having been timely filed, the Appeals Board has jurisdiction in this matter pursuant to A.R.S. § 23-724(B).

At the direction of the Appeals Board, a telephone hearing was conducted before ROBERT T. NALL, an Administrative Law Judge, on **June 19, 2007** and **June 26, 2007**.

At that time, all parties were given an opportunity to present evidence on the following issues:

1. Whether the employing unit is liable for Arizona Unemployment Insurance taxes under A.R.S. § 23-613, pursuant to:
 - a. the NOTICES OF ASSESSMENT dated June 27, 2002; and
 - b. the DETERMINATION OF LIABILITY FOR EMPLOYMENT OR WAGES dated June 27, 2002, for the quarters ending June 30, 1999 through December 31, 2001.
2. Whether services performed by individuals as XXXXXXXXXXXX XXX XXXXXXXXXXXX XXXXXXXX constituted "employment" effective April 1, 1999 to the present, as defined in A.R.S. § 23-615, and are not "exempt" or excluded from coverage under A.R.S. §§ 23-613.01, 23-615, or 23-617.
3. Whether remuneration paid to individuals for such services constitutes "wages", as defined in A.R.S. § 23-622, which must be reported and on which State taxes for Unemployment Insurance are required to be paid.

The following persons appeared at the hearing: four Employer witnesses who testified, one Department witness who testified, and the Assistant Attorney General as the Department's counsel. At the hearing, Board Exhibits 1 through 22 were admitted into the record as evidence.

The APPEALS BOARD FINDS the following facts pertinent to the issues here under consideration:

1. The Employer operated XX XXXXX XXXXXXX, XXXXXXX, XX X XXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXX X XXXX XXXXXXXXXXXXXXXX for about 14 years. Its owner has been the qualifying party for the XXXX XXXXXXX #XXXXXX (Tr. pp. 33-35; Bd. Exh. 6).
2. The Employer competed since October 1988 with other organizations that offered XXXXXXXXXXX XXX XXXXX XXXXXXX XXX XXXXXXXXXXX XXXXXXXXXXXX XXX XXXXXXXXXXXXXXXX (Tr. pp. 32, 33). The Employer described itself as a "go-between" service (Bd. Exh. 12). It performed security checks for people who were away from home, and provided a mail service. On a request basis, the company president and her husband would provide and

would pay from their own account to other persons for services rendered, such as: XXXXXXXXXXXX, XXXXXXXXXXXXXXXX, XXXXXXXXXXXX, XXXXXXXXXXXXXXXX, XXXX XXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXX, XXXXXXXX, XXXXXXXXXXX XXXXXXXX, XXXXXXXX, XXXXXXXXXXXX, XX XXXX XXXXXXXXXXX XXXXXXXX. The Employer would "... go out and find the workers and we get bids and... try to get the best ... worker for the money when we go out for bids" (Tr. pp. 33, 34, 36, 44-47, 52; Bd. Exh. 12).

3. The Employer entered into annual contracts with their workers on the advice of an accountant, so that the workers could not change their prices. The Employer paid the workers directly, and issued Miscellaneous Income documents, IRS report form 1099, forms to these workers. (Tr. pp. 36, 37, 47, 54-57; Bd. Exhs. 2, 3)
4. Only one of the individuals hired by the Employer held himself out as a XXXXXXXXXXXX XXXXXXXX. Each worker was required to give the Employer the hours that he worked and what the amounts were, on a twice-monthly basis, by a billing and a time card. None of the individuals paid by the Employer were licensed contractors (Tr. pp. 37, 38, 49, 58; Bd. Exh. 3).
5. The Employer called its payments to the workers a "commission" based upon how much the homeowners association had budgeted for each project (Tr. pp. 51, 57, 58). The Employer called its laborers, "subcontractors" (Bd. Exh. 6).
6. The Employer routinely required proof of legal work status in the form of an I-9 document, under a requirement of the Employer's liability insurance policy (Tr. pp. 51, 62).
7. Typically, the homeowners' association would provide instructions for the work they wanted done. Most of the homeowners' associations provided their instructions in the form of work orders to the Employer. The workers could bring in additional help at their discretion (Tr. pp. 52, 53).
8. The Department's audit of the Employer's records of payments to individuals was accurately compiled from the Employer's records (Tr. p. 54; Bd. Exh. 3).
9. The Employer provides no tools, trucks or direct supervision and never told the laborers when to work (Tr. pp. 52, 59, 68; Bd. Exh. 12). Materials such as XXXXXXXXXXXX XXX XXXXXXXX sometimes were bought by the homeowners' association, sometimes by the Employer and billed to the homeowners' association, and sometimes bought by the laborers (Tr. p. 60).

10. Two of the persons who worked on the Employer's behalf filed claims for Unemployment Insurance benefits, which triggered an investigation, an audit, and rulings by the Department (Tr. pp. 15, 30).
11. If a client homeowners' association disliked the work by an individual, the Employer routinely complied with the client's wishes by reassigning the worker elsewhere or by reducing his hours rather than fire the worker (Tr. pp. 64-66).
12. At some time prior to the Department's audit, the Employer was told by a Workman's' Compensation worker that her workers were not employees (Tr. pp. 68, 69).

The Employer contended that its commissioned laborers, whose employment is in dispute in this case, were independent contractors rather than employees. The Employer has not cited any case law, or any other legal provision including federal government exemption, expressly applicable to these circumstances.

Arizona Revised Statutes § 23-615 defines "employment" as follows:

"Employment" means any service of whatever nature performed by an employee for the person employing him, including service in interstate commerce ...

Arizona Revised Statutes § 23-613.01(A) provides in part:

Employee; definition; exempt employment

A. "Employee" means any individual who performs services for an employing unit and who is subject to the direction, rule or control of the employing unit as to both the method of performing or executing the services and the result to be effected or accomplished, except employee does not include:

1. An individual who performs services as an independent contractor, business person, agent or consultant, or in a capacity characteristics of an independent profession, trade, skill or occupation.
2. An individual subject to the direction, rule, control or subject to the right of direction, rule or control of an employing unit solely because of a provision of law regulating the organization, trade or business of the employing unit.

3. An individual or class of individuals that the federal government has decided not to and does not treat as an employee or employees for federal unemployment tax purposes. [Emphasis added].

* * *

Arizona Revised Statutes § 23-617 provides in part as follows:

“Exempt employment” means employment not considered in determining whether an employing unit constitutes an “employer” under this chapter and includes:

* * *

18. Casual labor not in the course of the employer's trade or business.

* * *

Arizona Administrative Code, Section R6-3-1723 provides in pertinent part:

- A. “Employee” means any individual who performs services for an employing unit, and who is subject to the direction, rule or control of the employing unit as to both the method of performing or executing the services and the result to be affected or accomplished. Whether an individual is an employee under this definition shall be determined by the preponderance of the evidence.
 1. “Control” as used in A.R.S. § 23-613.01, includes the right to control as well as control in fact.
 2. “Method” is defined as the way, procedure or process for doing something; the means used in attaining a result as distinguished from the result itself.
- B. “Employee” as defined in subsection (A) does not include:
 1. An individual who performs services for an employing unit in a capacity as an independent contractor, independent business person, independent agent, or independent consultant, or in a capacity characteristic of an independent profession, trade, skill or

occupation. The existence of independence shall be determined by the preponderance of the evidence.

2. An individual subject to the direction, rule, control or subject to the right of direction, rule or control of an employing unit “. . . solely because of a provision of law regulating the organization, trade or business of the employing unit”. This paragraph is applicable in all cases in which the individual performing services is subject to the control of the employing unit only to the extent specifically required by a provision of law governing the organization, trade or business of the employing unit.
 - a. “Solely” means, but is not limited to: Only, alone, exclusively, without other.
 - b. “Provision of law” includes, but is not limited to: statutes, regulations, licensing regulations, and federal and state mandates.
 - c. The designation of an individual as an employee, servant or agent of the employing unit for purposes of the provision of law is not determinative of the status of the individual for unemployment insurance purposes. The applicability of paragraph (2) of this subsection shall be determined in the same manner as if no such designated reference had been made.
[Emphasis added].

Arizona Administrative Code, Section R6-3-1723(D)(2) identifies common indicia of control over the method of performing or executing services that may create an employment relationship, i.e.: (a) who has authority over the individual's assistants, if any; (b) requirement for compliance with instructions; (c) requirement to make reports; (d) where the work is performed; (e) requirement to personally perform the services; (f) establishment of work sequence; (g) the right to discharge; (h) the establishment of set hours of work; (i) training of an individual; (j) whether the individual devotes full time to the activity of an employing unit; (k) whether the employing unit provides tools and materials to the individual; and (l) whether the employing unit reimburses the individual's travel or business expenses.

Additional factors to be considered in determining whether an individual may be an independent contractor rather than an employee, are enumerated in Arizona Administrative Code, Section R6-3-1723(E), i.e.: (1) whether the individual is available to the public on a continuing basis; (2) the basis of the compensation for the services rendered; (3) whether the individual is in a position to realize a profit or loss; (4) whether the individual is under an obligation to complete a specific job or may end his relationship at any time without incurring liability; (5) whether the individual has a significant investment in the facilities used by him; and (6) whether the individual has simultaneous contracts with other persons or firms.

When applying the guidelines set forth in Arizona Administrative Code, Section R6-3-1723(D)(2), our analysis includes consideration of the following factors:

a. Authority over Individual's Assistants

Hiring, supervising and payment of the individual's assistants by the employing unit generally shows control over the individuals on the job.

None of the laborers used paid assistants. The two assistants used by one laborer were paid directly by the Employer. This factor is neutral, with no impact on the crucial issue.

b. Compliance with Instructions

Control is present when the individual is required to comply with instructions about when, where or how he is to work. The control factor is present if the Employer has the right to instruct or direct.

The Employer is a XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX who must remain legally responsible for all sales transactions. The clients are required by law to pay a XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX for the services rendered. Control exists in every finalized sales transaction. This factor demonstrates an employment relationship.

c. Oral or Written Reports

If regular oral or written reports bearing upon the method in which the services are performed must be submitted to the employing unit, it indicates control in that the worker is required to account for his actions.

Each laborer was required by the Employer to provide time records twice each month, detailing who worked on each project and when. The payment by the Employer to the laborer was calculated based on this report, split as a

"commission". This factor demonstrates an employment relationship.

d. Place of Work

The fact that work is performed off the Employer's premises does indicate some freedom from control; however, it does not by itself mean that the worker is not an employee.

For all of the projects, the work was performed on client premises, thus indicating independence.

e. Personal Performance

If the service must be rendered personally, this would tend to indicate that the employing unit is interested in the method of performance as well as the result and evidences concern as to who performs the job. Lack of control may be indicated when an individual has the right to hire a substitute without the employing unit's knowledge or consent.

Any laborer was permitted to substitute another laborer. However, the Employer insisted upon checking citizenship status of all workers on every project. No testimony or evidence established that anybody ever tried to substitute. This factor indicates independence.

f. Establishment of Work Sequence

If a person must perform services in the order set for him by the employing unit, it indicates the worker is subject to control as he is not free to follow his own pattern of work, but must follow the routine and schedules of the employing unit.

All of the projects were performed according to work orders provided by the client homeowners' associations. Timing and work sequence were not dictated by the Employer. This factor indicates independence.

g. Right to Discharge

The right to discharge, as distinguished from the right to terminate a contract, is a very important factor indicating that the person possessing the right has control.

The Employer never discharged any worker. He would reassign a worker if a client was dissatisfied. No contractual penalty is specified for termination, including liquidated damages. This factor indicates an employment relationship.

h. Set Hours of Work

The establishment of set hours of work by the employing unit is indicative of control. This condition bars the worker from being master of his own time, which is the right of an independent worker.

The practice allowed each worker to fulfill each project according to the client's instructions, implying that irregular hours were permitted. This factor indicates independence.

i. Training

Training of an individual by an experienced employee working with him, or by required attendance at meetings, is indicative of control because it reflects that the Employer wants the service performed in a particular manner.

No formal training was undertaken. Rather, the Employer pre-screened each laborer for skills and I-9 status. This factor indicates independence.

j. Amount of Time

If the worker must devote his full time to the activity of the employing unit, it indicates control over the amount of time the worker spends working, and impliedly restricts him from doing other gainful work. An independent worker, on the other hand, is free to work when and for whom he chooses.

The practice allowed each laborer to work other projects elsewhere, or to work irregular hours at will. No minimum level of time or periodic effort was specified by the Employer. This factor indicates independence.

k. Tools and Materials

If an employing unit provides the tools, materials and wherewithal for the worker to do the job, it indicates control over the worker. Conversely, if the worker provides the means to do the job, a lack of control is indicated.

The Employer provided no tools. Sometimes the Employer provided materials and billed them to its client. Only tools and materials involved were the contractual documents provided by the Employer, which contains language that the Employer is required by law to ensure exists throughout each completed sales transaction. Each worker provided the means to do the job. This factor indicates independence.

i. Expense Reimbursement

Payment by the employing unit of the worker's approved business and/or traveling expenses is a factor indicating control over the worker. Conversely, a lack of control is indicated when the worker is paid on a job basis and has to take care of all incidental expenses.

No expenses were reimbursable. This factor is neutral, with no impact on the crucial issue.

The following additional factors enumerated in Arizona Administrative Code, Section R6-3-1723(E) also are significant and appropriate for consideration in determining the relationship of the parties:

1. Availability to the Public

Generally, an independent contractor makes his or her services available to the general public, while an employee does not.

None of the laborers advertised their services to the public. Only one laborer held himself out as a business. None of the laborers possessed the license required by law to deal directly with the public or the client on projects beyond "handy man" status. Some of the workers did side jobs for the public. Side jobs were not prohibited. This factor is neutral, with no impact on the crucial issue.

2. Compensation

Payment on a job basis is customary where the worker is independent, whereas an employee is usually paid by the hour, week or month.

Payments were based upon pre-set prices. Workers were paid based on jobs they did, as reported to the Employer. This factor indicates independence. The label of payment as "commission" is not dispositive because employees often work on commission.

3. Realization of Profit or Loss

An employee generally is not in a position to realize a profit or loss as a result of his services. An independent contractor, however, typically has recurring liabilities in connection with the work being performed. The success or failure of his endeavors depends in large degree upon the relationship of income to expenditures.

The laborers were not required to invest anything beyond their personal time, efforts, tools and materials. Enhanced efforts would not result in a higher commission,

and lack of diligence would not reduce the commission amount. This factor indicates an employment relationship.

4. Obligation

An employee usually has the right to end the relationship with an Employer at any time without incurring liability. An independent worker usually agrees to complete a specific job.

Each laborer could cease efforts at any time without penalty to the Employer, according to the written contract. The written contract specified the amount to be charged and prevented a change in pay. The lack of liquidated penalties for non-completion indicates an employment relationship.

5. Significant Investment.

A significant investment, by the worker, in equipment and facilities would indicate an independent status. The furnishing of all necessary equipment and facilities by the employing unit would indicate the existence of an employee relationship.

The laborers were not required or permitted to invest anything beyond their personal time, efforts, tools and materials. This factor indicates independence.

6. Simultaneous Contracts

An individual who works for a number of people or companies at the same time may be considered an independent contractor because he is free from control by one company. However, the person may also be an employee of each person or company depending upon the particular circumstances.

All laborers were permitted to work elsewhere simultaneously. This factor indicates independence.

Pursuant to Arizona Administrative Code, Section R6-3-1723(F), other factors not specifically identified in the rule subsections also may be considered.

One such crucial factor in this case is the complete absence of any legal authority for allowing any of the laborers to charge the clients a fee for their services. Each laborer was paid directly by the Employer for their services provided to the Employer's clients. None of the laborers were themselves licensed registered contractors. The nature of the work required a licensed, registered contractor. The Employer testified that the Employer became a licensed, registered contractor with pool certification upon realizing that the license was required by law. The Employer testified that its homeowners'

association clients were required by law to contract with a licensed, registered contractor and to pay only a licensed, registered contractor. The Arizona Legislature, in the body of law establishing a Registrar of Contractors, deliberately forbade these laborers from charging a fee for working as independent contractors on the projects for which the clients had been required to enter a contract with the Employer as a licensed, registered contractor. We have found find no legal basis or valid rationale for properly calling unlicensed laborers, “subcontractors”. This factor establishes an employment relationship.

No evidence establishes that any of the specifically-listed exemptions applies to the industry in which the Employer and its laborers admittedly engaged. The projects were not “casual labor”. The Employer used an annually-expiring contract for its projects, which establishes that the work was performed in the course of its business. Thus, we conclude that no exemption from employment status can be extended to these laborers, who were performing projects that required a licensed, registered contractor. This factor not only is strongly indicative of control, but extends further by conclusively establishing that the relationship must be that of employer and employee.

The Arizona Court of Appeals, in the case of *Arizona Department of Economic Security v. Little*, 24 Ariz. App 480, 539 P.2d 954 (1975), made it clear that all sections of the Employment Security Law should be given the long-established liberal construction in an effort to include as many types of employment relationships as possible, when the Court held:

The declaration of policy in the Act itself is the achievement of social security by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment [See A.R.S. § 23-601].

This view was reiterated by the Arizona Court of Appeals in the case of *Warehouse Indemnity Corporation v. Arizona Department of Economic Security*, 128 Ariz. 504, 627 P.2d 235 (App. 1981), where the Court ruled:

The Arizona Supreme Court has noted, however, that the Arizona Employment Security Act is remedial legislation. All sections, including the taxing section, should be given a liberal interpretation ... [Emphasis added].

In this case, the factors that tend to support the Employer's contention of independent contractor relationship or are neutral, include: the existence of signed “contractor agreements” (Bd. Exhs. 2, 17), performance of all labor off-premises, the lack of tools provided, the consistent payment of commissions followed by a Form 1099, the lack of micromanaged activities and ability to work at any time, the lack of paid assistants, and the opportunity to hire a

similarly-licensed substitute. Additional factors that are characteristic of independence include: the absence of set hours for work, the lack of extensive training and meetings, the lack of tools or office space provided to any laborer, the significant investment by the laborers in their own tools and equipment, and the freedom to work any hours with any potential customer. However, we conclude that the evidence of employee status outweighs these factors.

The factors tending to support an employer/employee relationship in this case include: the requirement that payment for the projects must be to a licensed and registered contractor such as the Employer; the fact that none of the laborers were themselves licensed contractors; the fact that only one of more than a dozen laborers held himself out to the public as a business; the fact that the projects were not casual labor outside the course of the Employer's business; the lack of any statutory exclusion from employee status applicable to these circumstances; the lack of recurring liabilities or expenditures by the laborers thereby averting an independent profit or loss risk to the laborer; the existence of control required by law to be exercised by the licensed registered contractor; and the requirement that the laborers must provide a time card in order to be paid by the Employer.

We find that the payment on a per-job or per-client basis by commissions, rather than some other method of calculation, does not require a conclusion that this relationship is with independent contractors. Similarly, the existence of independent contractor agreements remains a device useful to allow an argument that the relationship is not employment. The Employer explained that the contracts were recommended by an accountant, and served primarily to freeze the rates to be paid. However, by law those who are not licensed registered contractors cannot be truly independent in their actions on the types of projects that comprise the Employer's business. The laborers cannot legitimately arrange an annual services contract for a fee to the homeowners' association, as the Employer testified the homeowners' associations were required to pay only a licensed registered contractor. Hence, these factors favor employment status.

In its appeals, the Employer presented allegations that were not established by the evidence in this case, or that were contradicted by the evidence in this case. The Employer testified that none of its named laborers in the audit had paid assistants, although the Employer had alleged: "Several of our subcontractors DO hire, supervise and pay assistants." (Bd. Exh. 6). The Employer presented no evidence that any of the named laborers had substituted, although the Employer had alleged: "The subcontractors may provide substitutes as long as they conform to their contract with us, and are legal workers." (Bd. Exh. 6). The Employer presented no evidence that any of the laborers named in the audit, save one person, had made their services available to the general public as alleged in Bd. Exh. 6. We take a negative inference from the failure to provide a contract signed by or naming any of the laborers involved in the wage audit, and from the failure to present any ad to the public placed by any laborer.

We have thoroughly examined the factors established by the facts in this case, and we have considered the relevant law and administrative rules as they are applicable to those facts. We have considered the evidence as it relates to the factors set out in the Arizona Administrative Code, Subsections R6-3-1723(D) and (E). We conclude that the existence of separate contracts does not define the relationship involved in this industry, and does not remove the relationship from employment status for taxation purposes. No signed contract was provided regarding any of the laborers and any of the wages for the periods at issue. The legal requirements of the licenses involved carry far more weight than whatever paperwork the licensed registered contractor chose to sign with unlicensed persons (Bd. Exh. 2). We conclude that the services performed by individuals for the Employer, obviously under the Employer's license as a registered contractor, constitute employment.

Arizona Revised Statutes § 23-622(A) defines "wages" as:

"Wages" means all remuneration for services from whatever source, including commissions, bonuses and fringe benefits and the cash value of all remuneration in any medium other than cash. ...

Arizona Administrative Code, Section R6-3-1705(B) provides in pertinent part:

The name by which the remuneration for employment, or potential employment as provided in ... [A.A.C. R6-3-1705(G)], is designated or the basis on which the remuneration is paid is immaterial. It may be paid in cash or in a medium other than cash, on the basis of piece work or percentage of profits, or it may be paid on an hourly, daily, weekly, monthly, annual or other basis. The remuneration may also be paid on the basis of an estimated or agreed upon amount in order to resolve an issue arising out of an employment or potential employment relationship.

In this case, the Employer paid "commissions" to several individuals, based upon their labor on various projects for clients of the Employer. We conclude from the evidence that such remuneration constitutes wages as contemplated by the applicable statutes and administrative rules. Accordingly,

THE APPEALS BOARD **AFFIRMS** the Reconsidered Determination issued on July 6, 2005.

1. The employing unit is liable for Arizona Unemployment Insurance taxes under A.R.S. § 23-613, pursuant to:

- a. the NOTICES OF ASSESSMENT dated June 27, 2002; and
 - b. the DETERMINATION OF LIABILITY FOR EMPLOYMENT OR WAGES dated June 27, 2002, for the quarters ending June 30, 1999 through December 31, 2001.
2. The services performed by individuals as XXXXXXXXXXXX XXX XXXXXXXXXXXX XXXXXXXX constituted "employment" effective April 1, 1999 to the present, as defined in A.R.S. § 23-615, and are not "exempt" or excluded from coverage under A.R.S. §§ 23-613.01, 23-615, or 23-617.
 3. All forms of remuneration paid to individuals for such services constitutes "wages", as defined in A.R.S. § 23-622, which must be reported and upon which State taxes for Unemployment Insurance are required to be paid.
 4. The Employer **is liable** for Arizona Unemployment Insurance taxes on wages for the quarters ending June 30, 1999 through December 31, 2001, under A.R.S. § 23-613.

DATED:

APPEALS BOARD

WILLIAM G. DADE, Chairman

HUGO M. FRANCO, Member

MARILYN J. WHITE, Member

PERSONS WITH DISABILITIES: Under the Americans with Disabilities Act, the Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service, or activity. For example, this means that if necessary, the Department must provide sign language interpreters

for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. Please contact the Appeals Board Chairman at (602) 229-2806.

RIGHT TO FURTHER REVIEW BY THE APPEALS BOARD

Pursuant to A.R.S. § 23-672(F), the final date for filing a request for review is _____.

INSTRUCTIONS FOR FILING A REQUEST FOR REVIEW OF THE BOARD'S DECISION

1. A request for review must be filed in writing within 30 calendar days from the mailing date of the Appeals Board's decision. A request for review is considered filed on the date it is mailed via the United States Postal Service, as shown by the postmark, to any public employment office in the United States or Canada, or to the Appeals Board, 1140 E. Washington, Box 14, [Suite 104], Phoenix, Arizona 85034. Telephone: (602) 229-2806. A request for review may also be filed in person at the above locations or transmitted by a means other than the United States Postal Service. If it is filed in person or transmitted by a means other than the United States Postal Service, it will be considered filed on the date it is received.
2. Parties may be represented in the following manner:

An individual party (either claimant or opposing party) may represent himself or be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.
3. The request for review must be signed by the proper party and must be accompanied by a memorandum stating the reasons why the appeals board's decision is in error and containing appropriate citations of the record, rules and other authority. Upon motion, and for good cause, the Appeals Board may extend the time for filing a request for review. The timely filing of such a request for review is a prerequisite to any further appeal.

A copy of the foregoing was mailed on
to:

(x) Er: XXXXX'X XXXXXXXXX Acct. No: XXXXXXXX-XXX
 MANAGEMENT INC

(x) ROBERT J DUNN III
ASSISTANT ATTORNEY GENERAL CFP/CLA
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(x) JOHN NORRIS, CHIEF OF TAX
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By: _____
For The Appeals Board